

AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
for the
Western District of New York



United States of America)
)
v.)
)
JAMES SMALLEY)
)

Defendant

Case No. 19-MJ- 623

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between on or about the date of March 16, 2017 through January 15, 2018 in the county of Monroe in the Western District of New York, the defendant violated 18 U.S.C. §§ 38 (a)(1)(C) & (b)(4), an offense described as follows:

the defendant, in or affecting interstate or foreign commerce, knowingly and with the intent to defraud, made or used a materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning an aircraft or space vehicle part, in violation of Title 18, United States Code, Sections 38 (a)(1)(C) and (b)(4).

This criminal complaint is based on these facts:

X Continued on the attached sheet.

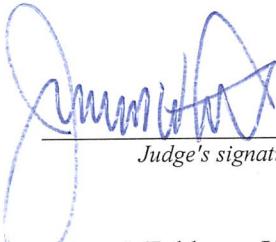
Please see attached affidavit


Complainant's Signature

Thomas L. Di Vita, II, S/A NASA
Printed name and title

Sworn to before me and signed in my presence.

Date: MAY 21, 2019


Judge's signature

City and State: Rochester, New York

Hon. Jonathan W. Feldman, U.S. Magistrate Judge
Printed name and title

19MJ623

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

State of New York)
County of Monroe) ss:
City of Rochester)

AFFIDAVIT

I, Thomas L. Di Vita, II, being duly sworn, do hereby depose and state as

follows:

1. I am currently employed as a Special Agent with the National Aeronautics and Space Administration (NASA), Office of Inspector General (OIG), Kennedy Space Center (KSC) Resident Agency, Florida, and have been since January 11, 2015. The NASA OIG is a federal law enforcement agency that investigates allegations of crime, cyber-crime, fraud, waste, abuse, and misconduct having impact on NASA programs, projects, operations, and resources.

2. I attended the Criminal Investigator Training Program, and the Inspector General Criminal Investigator Academy at Federal Law Enforcement Training Center (FLETC), Brunswick, Georgia. I have also received training in Government Contracting, as well as Grant and Procurement Fraud. As a Special Agent, I have conducted and assisted in the investigation of various matters involving crimes against the United States, specifically violations of Title 18 of the United States Code.

3. I was previously employed by the United States Attorney's Office, Middle District of Florida, Jacksonville Division, from August 1998 to January 2015, as a Litigation Support Specialist.

4. I earned a Master's of Science degree in Criminology at the Florida State University and a Bachelor of Arts degree in Criminal Justice Administration at the University of Phoenix.

5. This affidavit is submitted in support of an application for a Criminal Complaint against JAMES SMALLEY (SMALLEY) for violations of Title 18, United States Code, Sections 38 (a)(1)(C) and (b)(4), (in or affecting interstate or foreign commerce, knowingly and with the intent to defraud, making or using any materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning any aircraft or space vehicle part).

6. The statements in this affidavit are based in part on information obtained from the NASA OIG/OI KSC, Federal Bureau of Investigation (FBI), and United States Air Force Office of Special Investigations (OSI), as well as review of documents and interviews of fact witnesses. Since this affidavit is being submitted for the limited purpose of securing a Criminal Complaint, I have not included each and every fact known to me concerning this investigation.

BACKGROUND

7. Space Exploration Technologies Corp., doing business as SpaceX (SpaceX), is a private American aerospace manufacturer and space transportation services company headquartered in Hawthorne, California. SpaceX developed the Falcon launch vehicle family and the Dragon spacecraft family, which both currently deliver payloads into Earth orbit for NASA, Air Force, other United States government agencies and private industry.

8. SpaceX was contracted to conduct the following United States government space flight missions:

- a. NASA – CRS14: SpaceX 14th contracted cargo resupply mission to the International Space Station (ISS);
- b. NASA – CRS15: SpaceX 15th contracted cargo resupply mission to the ISS;
- c. NASA – CRS16: SpaceX 16th contracted cargo resupply mission to the ISS;
- d. NASA – TESS: Transiting Exoplanet Survey Satellite;
- e. NASA – Crew Dragon Demo 1: First mission under NASA Commercial Crew program with SpaceX Crew Dragon Spacecraft to and from the ISS;
- f. NASA – Crew Dragon Demo 2: First crewed mission under NASA Commercial Crew Program carrying two (2) NASA astronauts to and from the ISS on SpaceX Crew Dragon Spacecraft;
- g. NASA – GRACE-FO: Gravity Recovery and Climate Experiment Follow-on Satellite;

- h. Space Test Program-2 Mission (STP-2): SpaceX Falcon Heavy Spacecraft will launch with 25 spacecraft inside its nose cone, including satellites from NASA, National Oceanic and Atmospheric Administration (NOAA), and United States Air Force; and
- i. United States Air Force GPS III: GPS positioning, navigation and timing satellite.

9. PMI Industries, LLC (PMI), 350 Buell Rd, Rochester, NY 14624, was an aerospace precision machining service, specializing in high-tolerance machining (.0001") for flight critical aerospace parts used to build space flight vehicles by SpaceX and other Department of Defense aerospace contractors. PMI is a foreign limited liability company incorporated in the state of Delaware on October 14, 2014 (File Number 5613680), registered to conduct business in New York (NY Department of State ID# 4667068). PMI was registered to manufacture ITAR¹ parts.

10. BAM Industries, Inc., is a Domestic Business Corporation registered in the state of New York (Department of State # 4829018) and is categorized under manufacturing companies. BAM Industries, Inc. is a holding company for PMI².

¹ The International Traffic in Arms Regulations (ITAR) and is a set of government regulations related to defense exports. ... All manufacturers, exporters and brokers of defense articles, related to technical data and defense services as defined on the United States Munitions List are required to register.

² A holding company is a parent corporation, limited liability company, or limited partnership that owns enough voting stock in another company to control its policies and management. The company does not have any operations or active business itself; instead, it owns assets in one or more companies.

11. JAMES SMALLEY (SMALLEY), 22 Northview Drive, Penn Yan, New York, is a former employee of PMI. SMALLEY began his employment at PMI on March 6, 2017. He was recruited and hired as a Quality Assurance Engineer working on SpaceX contracts. SMALLEY received an Electrical Engineering from Corning Community College and an Electronics Engineering degree from Cornell University.

12. SQA Services, Inc. (SQA) located in Rolling Hills and Hawthorne, California, is a subcontractor to SpaceX, and provides multiple quality assurance functions within the aerospace and defense manufacturing industries. SQA provides services such as managing supplier quality services for audits, assessments, corrective actions, remediation, product source inspections, and engineering. SQA deploys associates who are located throughout the United States and in more than 50 countries around the world to supplier sites. SQA's associates are expert quality assurance professionals with broad experience.

13. Specifically, in the context of this investigation, SpaceX contracted multiple suppliers to produce various space vehicle parts for the assembly of Falcon 9 and Falcon Heavy series of space vehicles. SQA quality associates travel to suppliers to inspect parts for quality assurance and source inspections nationwide. SQA also conducts quality assurance audits onsite at SpaceX.

14. This investigation has identified that SMALLEY, as an employee of PMI, falsified at least thirty-eight (38) source inspection reports for space vehicle parts procured by SpaceX for the construction of the Falcon 9 and Falcon Heavy series of space vehicles.

INVESTIGATION

15. On January 12, 2018, an internal audit by SQA, at the direction of SpaceX, revealed multiple falsified source inspection reports and non-destructive testing (NDT) certifications from PMI Industries, LLC, for Falcon 9 and Falcon Heavy flight critical parts. SpaceX notified PMI of the anomalies. Source inspections and NDT are key tools used in the aerospace industry to ensure manufactured parts comply with quality and safety standards. Specifically, the signed source inspection report had a forged signature of the SQA inspector. SpaceX and SQA officials believed the signature of the inspector was photocopied and cut and pasted onto the source inspection report with a computer.

16. On February 16, 2018, the NASA Office of Inspector General (OIG), Kennedy Space Center (KSC) Resident Agency, received allegations from Christian J. Robison, Assistant Chief Counsel, NASA Launch Services Program (LSP), regarding falsified source inspection reports and false NDT certifications created by PMI. The source inspection reports were for parts purchased by SpaceX for construction of

Falcon 9 and Falcon Heavy space vehicles intended to perform various NASA, United States Air Force, and other United States Government agency space flight missions.

17. Robison was concerned because some of the false source inspection reports and false NDT certifications were related to space launch vehicle components that, at the time of discovery, were to be used for the upcoming Transiting Exoplanet Survey Satellite (TESS) mission. TESS is a NASA satellite and was designed to search for planets outside of the solar system orbiting other nearby, bright stars. The mission was intended to find those planets (e.g., "exoplanets") that periodically block part of the light from stars while transiting across the star. TESS launched from a SpaceX Falcon 9 rocket on April 18, 2018 from Space Launch Complex 40 on Cape Canaveral Air Force (CCAFS) Station.

18. A records request from SpaceX identified seven NASA space flight missions, two United States Air Force space flight missions, and one National Oceanic and Atmospheric Administration (NOAA) space flight mission that were affected by parts purchased by SpaceX from PMI.

19. On March 5, 2018 Special Agents of the FBI interviewed Victor Shell Alfiero, Chief Operating Officer, BAM Industries, Inc. Alfiero stated that PMI was contracted with SpaceX to make parts for its rocket program. Specifically, PMI converted raw metals such as aluminum and steel. Based upon specifications provided

by SpaceX, PMI manufactured the parts. All parts were ITAR restricted. PMI manufactured structural parts for the rockets to include the nose cone "faring" which has been designated as a fracture critical part. If this part malfunctions it could result in catastrophic failure of the mission.

20. Alfiero stated SMALLEY was hired by PMI to oversee quality operations and was tasked as a document control manager, which included overseeing a number of audits to include AS9100-Industry third-party auditors for testing systems and policies. This was a requirement for all parts manufactured for SpaceX. Alfiero explained that the final report of the third-party inspector was called a source inspection report. The independent third-party inspector physically examined the product and certified that all of the processes were properly conducted. The third-party inspector used by PMI for SpaceX was SQA.

21. Alfiero personally interviewed SMALLEY regarding the falsified source inspection reports. SMALLEY admitted to Alfiero to cutting and pasting the SQA inspector signature on the source inspection report. When asked why he did this, SMALLEY indicated that he wanted to ship more product for the company. Smalley indicated that no one knew that he was doing this and thought he may have forged the SQA inspectors' signatures approximately 5 to 10 times.

22. SpaceX terminated its business relationship with PMI as a disqualified supplier. PMI averaged approximately \$200,000 per month from the business with SpaceX. As a result of the lost business with SpaceX, PMI had to close its operation and terminate approximately thirty-five employees.

23. On March 6, 2018, SMALLEY was interviewed by Special Agents of the FBI regarding falsified source inspection reports and NDT certifications by SMALLEY admitted he forged the SQA Inspectors' signatures on the final source inspection reports approximately 15 to 30 times and possibly one or two NDT certifications. SMALLEY further estimated that he processed approximately 50 to 100 source inspection reports throughout his career with PMI, but not all of the source inspection reports were falsified.

24. On April 25, 2018, SMALLEY was interviewed a second time by Special Agents of NASA OIG and the FBI regarding falsified source inspection reports and NDT certifications. SMALLEY stated he only falsified source inspection reports related to parts produced for PMI's contracts with SpaceX. Smalley did not falsify reports related to parts produced for any of PMI's other aerospace customers.

25. SMALLEY stated he substituted two or three NDT certification reports for parts that had not had NDT certifications performed by a third-party inspector. He used NDT certificates from similar parts that had NDT certifications from third-party

inspector and placed them into the source inspection report packages for those parts that were missing NDT certifications.

26. SMALLEY stated he forged the names of at least three SQA employees: J.K.; J.B.; and A.S. He also used their quality stamps without their permission. SMALLEY stated he did not write the signatures himself or use the actual quality stamps of those individuals, but used his PMI laptop to copy and paste the signatures and stamps onto falsified source inspection reports. If there was a SQA employee's signature and/or SQA quality stamp on the source inspection reports SMALLEY falsified, SMALLEY would have used his PMI laptop to cut and paste those signatures and/or quality stamps on the falsified source inspection reports. SMALLEY turned over his PMI laptop to PMI after he was fired.

27. SMALLEY stated there was no person who instructed him or showed him how to falsify the source inspection reports. There was no person who knew SMALLEY was falsifying source inspection reports. He came up with the idea on his own. He tried first with two or three source inspection reports that he falsified. Those source inspection reports made it through the entire process and the parts were subsequently shipped out to SpaceX with no issues. SMALLEY stated he continued to falsify source inspection reports. SMALLEY admitted it was wrong to falsify the source inspection reports and NDT certifications.

28. During a review of records provided by SQA, the investigation identified a sophisticated scheme developed by SMALLEY. The scheme enabled SMALLEY to circumvent a protocol put in place by SpaceX for processing parts and generating required source inspection documentation.

29. Specifically, SQA was required to inspect each part manufactured by PMI prior to the parts being shipped to SpaceX. SQA was also required to generate a source inspection report for the event. SQA used the terminology “event” for a scheduled inspection. If an SQA event was scheduled and the parts failed inspection, a “fail” source inspection report would be generated by SQA and SpaceX would be notified of the failure. For failed inspections, the parts would be reworked by PMI, at which point another event was to be scheduled so the parts may be inspected/shipped. However, if an event was cancelled or never rescheduled by SMALLEY, SpaceX would not be notified of the event. This would allow SMALLEY to falsify source inspection documentation, upload the falsified source inspection documentation into an online SpaceX portal and ultimately ship the parts to SpaceX. This scheme by SMALLEY also removed SQA from the source inspection process.

30. For example, source inspection event #172573 was created for July 18, 2017 for the inspection of two different parts PMI manufactured parts (01086472-001 and 01086472-002). On July 17, 2017, SMALLEY emailed E. S. Director of Technical Programs, SQA Services, to reschedule the event. On July 19, 2017, J.K., SQA

Inspector, rejected both parts because they were not available for inspection. J.K. generated a source inspection report dated July 19, 2017, which read, "Hard Fail," "Anomaly/Nonconformance – Do not ship unless via Approved SRI." A new event was never scheduled.

31. On September 29, 2017, at approximately 12:21:38 and 11:09:42 respectively, SMALLEY uploaded falsified source inspection reports for the parts above (paragraph 30) into a SpaceX web-based portal. The falsified documents contained forgeries of J.K.'s signature, as well as the unauthorized use of J.K.'s Quality Assurance stamp (SQA010). On October 3, 2017, SMALLEY caused part numbers 01086472-001 and 01086472-002 to be shipped from Rochester, New York to Hawthorne, California, via Federal Express (tracking no. 770409157922), without having a final inspection.

Purchase Order Line Item	Part No (Qty)	Date Inspection Canceled or Rescheduled	Part(s) Rejection Date	Date on Falsified Source Inspection	Forged Signature of SQA Rep	Forged SQA Stamp No.	Date of Upload to SpaceX Portal by SMALLEY	Date Parts Shipped to SpaceX
714970-17	01086472-001 (4)	07/19/2017	07/19/2017	09/29/2017	J.K.	010	9/29/2017	10/3/2017
714970-18	01086472-002 (4)	07/19/2017	07/19/2017	09/29/2017	J.K.	010	9/29/2017	10/3/2017
758008-1	00473298-011 (5)	09/18/2017	*	11/17/2017	J.B.	310	11/27/2017	11/17/2017
748466-1	00050849-001 (4)	10/24/2017	11/07/2017	12/16/2017	J.K.	010	12/19/2017	12/19/2017
748466-2	00050849-003 (4)	10/24/2017	11/07/2017	12/16/2017	J.K.	010	12/19/2017	12/19/2017
800704-1	01086472-001 (7)	12/01/2017	12/22/2017	01/03/2017	A.S.	413	1/3/2018	1/3/2018
804209-1	00473298-011 (12)	12/19/2017	*	12/19/2017	J.K.	010	12/19/2017	12/19/2017
			* Parts never inspected					

32. The chart above identifies a total of seven instances identified (which include the parts in paragraph 30 above), in which SMALLEY used the scheme to defraud by circumventing a protocol put in place by SpaceX for processing parts and generating required source inspection documentation:

33. This investigation identified an additional thirty-one (31) instances when an SQA event was cancelled, rescheduled, or never scheduled, in which SMALLEY uploaded falsified source inspection reports into the SpaceX online portal and subsequently shipped uninspected or nonconforming parts to SpaceX.

34. This investigation also identified at least five (5) instances when SMALLEY included falsified NDT certifications in the documents he uploaded into the SpaceX portal.

35. This investigation has also identified at least seventy-six (76) individual piece parts that were rejected during source inspection or were never inspected by SQA, then subsequently shipped to SpaceX.

36. This investigation has also identified at least three (3) SQA inspectors' signatures that were forged and the same number of quality assurance stamps used without authorization.

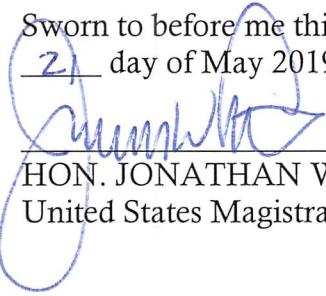
CONCLUSION

37. Based on the foregoing, there is probable cause to believe that from on or about March 6, 2017, through on or about January 15, 2018, in Monroe County, in the Western District of New York, JAMES SMALLEY, in or affecting interstate or foreign commerce, knowingly and with the intent to defraud, made or used a materially false writing, entry, certification, document, record, data plate, label, or electronic communication concerning an aircraft or space vehicle part, in violation of Title 18, United States Code, Sections 38 (a)(1)(C) and (b)(4).



Thomas L. Di Vita, II
Special Agent
NASA Office of Inspector General

Sworn to before me this
21 day of May 2019.



HON. JONATHAN W. FELDMAN
United States Magistrate Judge